* **HIGH COURT OF DELHI : NEW DELHI**

\+ **ITA No. 1185 of 2006 with**
**ITA Nos. 1184, 1186 and 1191 of 2006**

Judgment reserved on: 12th January , 2007

% Judgment delivered on: 17th January , 2007

B.M. GUPTA & SONS (HUF)
50/8, Tolstoy Lane, Janpath
New Delhi ..... Appellant
Through Mr. K.Sampath

versus

ACIT
Circle 39 (1)
New Delhi ..... Respondent
Through Mr. J.R. Goel

Coram:

**HON'BLE MR. JUSTICE MADAN B. LOKUR**
**HON'BLE MR. JUSTICE V.B. GUPTA**

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

**V.B. GUPTA, J.**

1. By this common Judgment, four appeals being ITA Nos. 1184/06, 1185/06, 1186/06 and 1191/06 filed by the Appellant are disposed of, as all these appeals have common ground.

2. These appeals arise out of a decision dated 24th February,

2006 passed by learned Income Tax Appellate Tribunal.

3. Appellant is the owner of the premises bearing Municipal No. 50/1, Ist Floor, Janpath, New Delhi which have been let out. The rent of this premises was increased retrospectively with effect from 1-4-94 by way of an agreement and as a result thereof, the appellant received a sum of Rs. 38,55,827.40/- during the financial year 1999-2000 on account of arrears of rent for the period 1-4-94 to 31-03-99. The appellant did not offer this rental income in the year relevant to the assessment year of receipt nor offered the same in the relevant assessment years.

4. Appellant's case is that he received the arrears of rent during the financial year 1999-2000 on account of arrears of rent for the period 1-4-94 to 31-3-99 which, in fact, was damages and mesne profits received by the appellant in the compromise settlement arrived in the suit filed by the appellant against the insurance company for vacating the premises. The same though measured in terms of arrears of rent was not rent at all. It was only damages and mesne profits which cannot be taxed being in the nature of capital receipt. Further, the arrears of rent cannot be taxed as it was received after the end of the financial year relevant to the assessment year and the

appellant has relied upon a decision of our own High Court in the case of ***Commissioner of Income Tax Vs. Ms Sadhna Chadha***, 270 ITR 534 as well as the decision of Calcutta High Court in the case of ***Hamilton & Co. Pvt. Ltd. Vs. CIT***, 194 ITR 391.

5. The Commissioner of Income Tax as well as Income Tax Appellate Tribunal did not agree with the contentions of the Appellant and hence the present appeals.

6. The contention of learned counsel for the appellant is that the sum of arrears was in the nature of mesne profits and not arrears of rent and as such the same cannot brought to tax under the head "income from house property". The tribunal failed to appreciate that rent not relating to the relevant previous years cannot form part of the annual rent for the previous year for determining the annual value of the property. The tribunal also failed to appreciate that Section 25(B) of the Income Tax Act did not apply to the assessment year under consideration and the provision being prospective in nature it could not apply to any earlier assessment year.

7. On the other hand, it has been argued by learned counsel for the respondent that the income becomes taxable on the footing of accrual only after the right of tax payer to the income

accrues or arises, and in the case of an agreement which makes profits receivable at or on the happening of a contingency. In the present case, by virtue of the agreement between the parties, the appellant not only acquired right to additional income, but, in fact, received the arrears of rent during the financial year 1999-2000 attracting provisions of Section 5(1)(a) of the Income Tax Act 1961. The insertion of Section 25(B) of the Act by Finance Act, 2000 is more clarificatory in nature. It only clarifies the position that if any arrears of rent are received in a subsequent year, the same will be taxed in the year of receipt. It is also contended that the case of ***CIT Vs. Ms. Sadhna Chadha*** (supra), in fact, support the case of the Department and not that of the appellant.

8. Appellant has placed on record copy of order dated 23.8.99 passed by learned Additional District Judge, Delhi in the suit filed by him against his tenant as well as application under Order 23 Rule 1 C.P.C. According to it, it was agreed that the tenant shall pay rent as well as arrears of rent to the appellant. So, this plea of the appellant that it was “damages and mesne profit” and not `rent' is thus unfounded.

9. Since, these are arrears of rent, it would attract the provision of Section 5 (1) (a) of the Income Tax Act, 1961.

10. As per decision of ***CIT Vs. Ms. Sadhna Chadha*** (supra), the arrears of rent are to be assessed in the year to which they relate and not in the year of actual receipt. This judgment nowhere lays down that the arrears of rent are not taxable at all.

11. The above being the position, no fault can be found with the view taken by the appellate authorities below. Thus, the order of Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of Section 260-A of the Income Tax Act, which is confined to entertaining only such appeals against the order which involves a substantial question of law.

12. Accordingly, present appeals are hereby dismissed.

**(V. B. GUPTA)**
**JUDGE**

**(MADAN B. LOKUR)**
**JUDGE**

**January 17, 2007**
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